

Non paper of the Ministry of Foreign Affairs of the Slovak Republic on the Presidential decrees of the Czechoslovak Republic

The Ministry of Foreign Affairs of the Slovak Republic has noted with surprise the recent re-opening of the topic of post-war legislation of the former Czechoslovak Republic before the European Parliament by the Hungarian Prime Minister. In this respect, we deem it necessary to present certain background data.

Presidential decrees (referred to also as "Beneš decrees") are generally binding legal acts issued by the then exiled president of the Czechoslovak Republic, mostly at the final stages of World War II and also during the post-war period until the establishment of the Provisional National Assembly of the Czechoslovak Republic. There had been more than 140 of such legal acts that applied to various aspects of life of the society. All decrees were subsequently endorsed by the Provisional National Assembly and acquired the force of laws and/or constitutional statutes of the Czechoslovak Republic. Since the Presidential decrees are perceived as affirmation of legal continuity of the Czechoslovak Republic with its pre-war existence, it is unacceptable to take a negative view of the entire body of these legal acts issued by a legitimate State power. In the post-war legislation of the Czechoslovak Republic, they constituted the legal base for restoring, in the aftermath of World War II, the democratic Czechoslovak Republic, split as a result of Munich Pact of 29 September 1938 and Vienna Arbitration of 2 November 1938. The decrees thus form part of the legal system of the Slovak Republic as a successor to the Czech and Slovak Federal Republic.

None of the Presidential decrees provided specifically for expulsion of Germans from Czechoslovakia. The decision to that effect was taken at the Potsdam Conference by victorious powers. The idea of population transfers was not an uncommon solution used at the time to address the issue of minorities that could eventually become a source of tension in international relations. The Potsdam Declaration from 2 August 1945, which has the character of an international treaty, provides in its Article XIII for the transfer of ethnic Germans from Poland, Czechoslovakia and Hungary. Around 30 thousand ethnic Germans were thus expelled from Slovakia after World War II (compared to around 250 thousand ethnic Germans expelled from Hungary). Presidential decrees must be viewed against the background of their causal relationships with war events and the period of non-freedom (30 September 1938 – 4 May 1945), and their place in the post-war organisation of the world. Measures taken by Czechoslovak authorities were in conformity with the conclusions of Potsdam Conference and Agreement on Reparations from Germany, on the establishment of Inter-Allied Reparation Agency and Tripartite Commission for the Restitution of Monetary Gold based on the Conference (Paris, 21 December 1945).

Potsdam Conference conclusions did not specifically regulate the status of the Hungarian minority in Czechoslovakia, as this issue was to be dealt with under a bilateral agreement between Czechoslovakia and Hungary. Exchange of persons of Hungarian and Slovak nationality (i.e. ethnicity) was thus carried out under a bilateral treaty – the Czechoslovak-Hungarian Agreement on Population Exchange (Budapest, 27 February 1946). Under the Agreement, persons of Hungarian nationality who had

permanent residence within the territory of Czechoslovakia and who were stripped of their Czechoslovak citizenship under the relevant decree, were relocated to the territory of Hungary; their number was to be the same as was the number of persons of Slovak or Czech nationality who wanted to move voluntarily from Hungary to Czechoslovakia. The Czechoslovak Government was granted the right to go beyond the agreed number and to relocate to Hungary also those persons of Hungarian nationality with permanent residence in Czechoslovakia who committed one of the criminal offences mentioned in the Agreement. On the whole, population exchange concerned around 55,000 ethnic Hungarians who were transferred from Slovakia to Hungary and around 59,000 ethnic Slovaks who came from Hungary to Slovakia. The Agreement on Population Exchange and related international treaties, in particular Protocol between the Czechoslovak Republic and the Republic of Hungary on Final Settlement of Certain Unresolved Financial and Economic Issues (Štrbské pleso, 25 July 1949), settled with final effect property-related issues connected with population exchange between the Czechoslovak Republic and Hungary. Hungary lacks the grounds to open such property-related issues also due to the fact that it has not as yet returned Czechoslovakia artefacts belonging to the Czechoslovak cultural heritage, of which the Hungarian State or Hungarian public institutions gained possession after 1848 by virtue of Hungarian rule in the pre-1919 period. Hungary was held liable for the return of those artefacts under the Peace Treaty with Hungary (Paris, 10 February 1947).

The decrees that come most often under discussion are those related to the punishment for criminal and unlawful acts (so-called retribution decrees), confiscation of property or loss of citizenship. These legal acts created legal relationships that were the consequence of wartime events, and through which the legislative power strove to mitigate the damage inflicted as a result of extraordinary circumstances at the time of non-freedom. Legal regulations in question fulfilled those aims in the immediate post-war period, and they no longer give rise to legal relationships at present. The claim that the decrees were based on collective guilt is not correct. Retribution decrees (in particular Decree No. 16/1945 Coll.) were based exclusively on individual guilt. Courts handed down convictions for criminal offences committed at the time of the danger to the Republic by judgments rendered in criminal proceedings. Neither were the so-called confiscation decrees based on collective guilt. Thus, "confiscation decrees" (such as Decree No. 108/1945 Coll.) were applied in respect of property within the territory of Slovakia, which was owned not only by Germans or Hungarians, but also by traitors and enemies irrespective of their nationality. Under its exemption clause, the Presidential decree did not apply to those persons of German or Hungarian nationality who were able to demonstrate that they had remained faithful to the Czechoslovak Republic, have never committed offences against the Czech or Slovak nations, and have either taken an active part in the struggle for liberation, or had suffered consequences of Nazi terror. Although these provisions were based on the presumption of responsibility of persons of German and Hungarian nationality, they represented an adequate reaction to acts of aggression by Germany and Hungary of that time and pursued the aim of mitigating, both politically and economically, consequences of occupation. Property confiscation was carried out as of the date that marked the *de facto* end of German and Hungarian occupation. The confiscation was internationally confirmed by the Agreement on Reparations from Germany, on the establishment of Inter-Allied Reparation Agency and Tripartite Commission for the Restitution of Monetary Gold (Paris, 21 December 1945). It should be emphasised

that confiscation and nationalisation measures were implemented against the backdrop of broader social changes, and their further purpose was also to perform a land reform.

Another legal act of a similar character was Constitutional Decree No. 33/1945 Coll. on Citizenship that represented the legal base for stripping persons of German or Hungarian nationality of Czechoslovak citizenship. The decree did not apply to those Germans and Hungarians who at the time of the danger to the Republic declared themselves to be Czech or Slovak. Czechoslovak citizenship was preserved also by those persons who were able to demonstrate that they had remained faithful to the Czechoslovak Republic, have never committed offences against the Czech or Slovak nations, and have either taken an active part in the struggle for liberation, or had suffered consequences of Nazi terror. The decree further provided that those persons who have lost their Czechoslovak citizenship might request the return of their citizenship within six months. Under the legislation adopted at a later date, Czechoslovak citizenship was returned to persons of Hungarian or German nationality with residence in the Czechoslovak Republic who were not citizens of a foreign state.

A differentiated approach must be taken to evaluating the legal status of decrees "en bloc". Some decrees are no longer in force since they were either rescinded or superseded by more recent legal acts. Other decrees may be formally in force and in effect but, since they were applicable only to a certain limited period in the aftermath of World War II, they had been consumed and do not give rise to any new legal relationships, i.e. do not have a constitutive character. It can be noted that, in general, as long as Presidential decrees of the 1940 - 1945 period are still in effect, they have become obsolete (fell out of use). For this reason, none of the provisions of the decrees is applicable to persons of Hungarian or German nationality. Since the Presidential decrees do not give rise to new legal relationships at this time, it is not possible to examine their compliance with "acquis communautaire". Similar measures were taken at the time also by other European countries – current Member States of the EU. Assumption of commitments arising from the Treaty Establishing the EC does not have retroactive derogative effects and does not imply any obligation to revise the Presidential decrees or to interfere with the legal relationships they created.

The above issues have also their moral dimension. On 12 February 1991, the Slovak National Council issued a "Declaration on the Expulsion of Slovak Germans" whose spirit is expressed in its final sentence – "May the bridge of understanding between our nations span for ever the drying up river of war hatred." In the Declaration, the Slovak Republic expressed appreciation for historical contribution of Germans living in Slovakia to economic and cultural development of Slovakia, and expressed its regret at the suffering inflicted as a result of expulsion also on innocent ethnic Germans. By contrast, Hungary has not yet deemed it appropriate to apologise for the fact that it occupied, in violation of the principles of international law, part of Czechoslovak and/or Slovak territory during World War II under the Vienna Arbitration of 1938.

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